

STATE OF MICHIGAN
COURT OF APPEALS

WILLIE MAE SUMMERS,

Plaintiff-Appellant,

V

J.L. SUMMERS,

Defendant-Appellee.

UNPUBLISHED

March 20, 2003

No. 235817

Berrien Circuit Court

LC No. 1999-3958-NI-T

Before: Schuette, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

In this personal injury action, plaintiff appeals as of right from the judgment of no cause of action in favor defendant and against plaintiff based on the jury's unanimous finding that plaintiff did not have a serious impairment of body function. We affirm.

Plaintiff, in propria persona, contends that her attorney was ineffective because he failed to called witnesses and introduce certain evidence. Plaintiff appears to be making an ineffective assistance of counsel claim. In *United States v \$100,375 in US Currency*, 70 F3d 438, 440 (CA 6, 1995), the Sixth Circuit Court of Appeals noted that the Sixth Amendment right to effective assistance of counsel is "explicitly confined to 'criminal prosecutions.'" (Citations omitted). Likewise, Const 1963, art 1, § 20 states:

In *every criminal prosecution*, the accused shall have the right to . . . have the assistance of counsel of his or her defense [Emphasis added.]

We conclude that plaintiff's claim must fail because this right applies to criminal proceedings, and not the civil case at hand.

Plaintiff next contends that the doctors who treated her after her accident deviated from the standard of care. Plaintiff has provided no authority, however, demonstrating that these claims of medical malpractice may be raised and resolved for the first time here on appeal. A bald assertion without supporting authority precludes this Court from examining such an issue. *Impullitti v Impullitti*, 163 Mich App 507, 509; 415 NW2d 261 (1987) (citing *People v Noble*, 152 Mich App 319, 328; 393 NW2d 619 (1986)). Therefore, we decline to examine this issue.

Plaintiff also contends that there was sufficient evidence to support a finding that she suffered a serious impairment, and that the jury verdict should be set aside. MCR 2.610(A)(1)

states that within twenty-one days after the entry of judgment, a party may move to have the verdict and judgment set aside, and to have judgment entered in the moving party's favor. In this case, plaintiff failed to file such a motion. Therefore, plaintiff failed to preserve this argument. In addition, plaintiff has failed to show that a miscarriage of justice or manifest injustice will occur if we decline to address this issue. See *Napier v Jacobs*, 429 Mich 222; 414 NW2d 862 (1987).

Plaintiff also contends that defendant's attorney presented altered evidence, made false statements that inflamed the jury, and tried to persuade his client to lie under oath regarding the speed of the vehicle traveling in front of defendant at the time of the accident.

When reviewing an appeal asserting improper conduct of an attorney, we first determine whether the claimed error was in fact error, and if so, whether it was harmless. *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 103; 330 NW2d 638 (1982). However, if the improper conduct was not objected to, we review for plain error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000) (citing MRE 103(d)). Plaintiff did not object below.

Plaintiff argues that defendant's attorney misled the jury by making the following statements in his opening argument:

The more important question really for this case is, what injuries are from this accident. There's no dispute that Mrs. Summers had a fractured nose. She goes to the emergency room. And in fact, that's the only thing she's complaining of at the emergency room.

In *Taylor v Klahm*, 40 Mich App 255, 261; 198 NW2d 715 (1972) (citations omitted), this Court noted that considerable latitude is allowed counsel in outlining to the jury the evidence to be submitted, and that what constitutes a fair opening statement is largely a matter addressed to the trial court's discretion. On the record before us, we conclude that defendant's attorney was merely outlining the evidence to be submitted. Therefore, plaintiff has failed to demonstrate that an error, plain or otherwise, occurred.

Plaintiff also argues that defendant's attorney tried to persuade defendant to state that he was driving twenty-five miles per hour when the accident occurred. On cross-examination of defendant, his attorney asked defendant if he estimated the speed of the slow moving vehicle in front of him at twenty-five miles per hour. MRE 611(b) states that a witness may be cross-examined on any matter relevant to any issue in the case, including credibility. "The judge may limit cross-examination with respect to matters not testified to on direct examination." MRE 611(b). MRE 611(c)(2) states that leading questions should ordinarily be permitted on cross-examination. We conclude that defendant's attorney did not commit an error with regard to his questioning of defendant because the issue of speed was addressed during the direct examination and because the attorney could ask leading questions during the cross-examination of defendant.

Plaintiff also argues that her questionnaire for Dr. Wooten and the report of Dr. Fenske were altered. However, neither the questionnaire nor the report were admitted into evidence. Therefore, plaintiff has failed to demonstrate that an error occurred.

Plaintiff also argues that while defendant's trial exhibit C, an unemployment claim form, contains her signature, the answers to the questions were not written by her. We note that plaintiff did not object when defendant moved for the admission of this exhibit. We further note that plaintiff does not argue that the information on this form is incorrect. We conclude that plaintiff has failed to show that an error occurred in the admission of this evidence.

Plaintiff also contends that the jurors were biased because plaintiff was suing her husband and that this bias affected the jurors' verdict. We disagree. We note that three of the jurors plaintiff now claims were biased were either dismissed for cause or excused. Therefore, none of these jurors could have affected the verdict. The remaining jurors were not challenged for cause by plaintiff, and no post-trial motion concerning their alleged bias was filed in the trial court. An argument that was not raised below and was not addressed by the trial court is not preserved for appellate review. *Camden v Kaufman*, 240 Mich App 389, 400, n 2; 613 NW2d 335 (2000). Therefore, we decline to address this issue.

Finally, plaintiff contends that the trial court abused its discretion by not assisting her in the introduction of evidence at the trial. We disagree. "The principal limitation on a court's discretion over matters of trial conduct is that its actions not pierce the veil of judicial impartiality." *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996) (citing *People v Burgess*, 153 Mich App 715, 719; 396 NW2d 814 (1986)). We conclude that the trial court did not err by not assisting plaintiff with the introduction of evidence because this would have pierced the veil of judicial impartiality.

Affirmed.

/s/ Bill Schuette
/s/ David H. Sawyer
/s/ Kurtis T. Wilder